Supreme Court, U.S.
FILED
OCT 18 1984
ALEXANDER L. STEVAS
CLERK

No. 84-356

In the Supreme Court of the United States

OCTOBER TERM, 1984

THE TRAVELERS INSURANCE COMPANY,
APPELLANT

v.

COMMONWEALTH OF MASSACHUSETTS

On Appeal From The Supreme Judicial Court For The Commonwealth Of Massachusetts

REPLY BRIEF FOR APPELLANT THE TRAVELERS INSURANCE COMPANY

LANE MCGOVERN
Counsel of Record
STEVEN A. KAUFMAN
ROPES & GRAY
225 Franklin Street
Boston, Massachusetts 02110
(617) 423-6100
Attorneys for Appellant, The Travelers Insurance Company

Blanchard Press, Inc., Boston, Mass. — Law Printers [617] 426-6690

9 pp

TABLE OF CONTENTS

	Page
Table of Cases	i
Argument	1
Conclusion	6

TABLE OF CAESE

Belknap, Inc. v. *Hale*, 103 S. Ct. 3172 (1983) 2, 4, 5

Brown v. *Hotel and Restaurant Employees Local 54*, 104 S. Ct. 3179 (1984) 2, 3, 4, 5

DeVeau v. *Braisted*, 363 U.S. 144 (1960) 3

Free v. *Bland*, 369 U.S. 663 (1962) 3, 4

H. K. Porter & Co. v. *NLRB*, 397 U.S. 99 (1970) 3

Hill v. *Florida*, 325 U.S. 583 (1945) 3

Local 24, International Brotherhood of Teamsters v. *Oliver*, 358 U.S. 283 (1959) 4, 5

Machinists v. *Wisconsin Employment Relations Commission*, 427 U.S. 132 (1976) 5

Malone v. *White Motor Corp.*, 435 U.S. 497 (1978) 4

New York Telephone Co. v. *New York Dept. of Labor*, 440 U.S. 519 (1979) 4

In the
Supreme Court of the United States

OCTOBER TERM, 1984

No. 84-356

THE TRAVELERS INSURANCE COMPANY,
APPELLANT,

v.

COMMONWEALTH OF MASSACHUSETTS,

On Appeal From The Supreme Judicial Court For The Commonwealth Of Massachusetts

REPLY BRIEF FOR APPELLANT THE TRAVELERS INSURANCE COMPANY

Argument

Unaccountably, the Commonwealth's motion comes very close to a complete failure to respond to appellants' arguments on NLRA preemption. The Commonwealth does, in a footnote, cite two decisions and incorporate by reference its previous motion to dismiss or affirm filed two years ago. No attempt is made, however, to analyze this Court's recent decisions or to address any of the appellants' arguments based upon them. Perhaps the Commonwealth's thought is that the subject of NLRA preemption will be overlooked if it isn't

mentioned. Such an approach irresponsibly misestimates the very substantial importance of this issue.

The Commonwealth impedes analysis, and misguides the Court, when it asserts in a footnote that *Belknap, Inc.* v. *Hale*, 103 S.Ct. 3172 (1983), and *Brown* v. *Hotel and Restaurant Employees Local 54*, 104 S.Ct. 3179 (1984), "implicitly affirmed" that Section 47B is not preempted by the National Labor Relations Act. *See* Commonwealth's Motion To Dismiss Or Affirm at i-ii, note*. They do no such thing. The holdings of *Belknap* and *Brown* do not address, let alone decide, whether the NLRA preempts a state statute, such as Section 47B, which effectively dictates the substantive content of collective bargaining agreements. Moreover, the preemption principles enunciated and applied in *Belknap* and *Brown* advance the appellants' contention that collective bargaining freedom is so central to federal labor policy that state legislation interfering with that freedom cannot be tolerated in the absence of a clear congressional directive to the contrary.

1. The state legislation at issue in *Brown* was a New Jersey statute that disqualified certain persons from serving as officials of labor organizations representing casino industry employees, and provided that labor organizations with disqualified officials may be prohibited from collecting dues and administering pension and welfare funds. 104 S.Ct. at 3182. The New Jersey Casino Control Commission, which was charged with enforcing the statute, determined that certain officials of Local 54 were "disqualified persons" under the statute, and threatened to prohibit the union from collecting dues until those officials were replaced. 104 S.Ct. at 3184. The union and its officials filed suit to bar the Commission from imposing sanctions, contending that the state statute was

preempted by the NLRA. *Id.* In support of that contention they argued thus:

> (1) *Hill* v. *Florida*, 325 U.S. 583 (1945), established the proposition that the NLRA confers an unfettered right on employees to choose the officials of their bargaining representatives.
>
> (2) The New Jersey statute interferes with the exercise of that federally created right.
>
> (3) Where a state law interferes with the exercise of a federally created right, "[t]he relative importance to the State of its own law is not material . . . for the Framers of our Constitution provided that the federal law must prevail." *Free* v. *Bland*, 369 U.S. 663, 666 (1962).
>
> (4) Therefore, the New Jersey statute must yield to superior federal authority.

104 S.Ct. at 3186-87.

This Court accepted, indeed endorsed, the logic of the union's argument. *Id.* The Court rejected the union's conclusion solely on the ground that the decision in *Hill* v. *Florida*, 325 U.S. 538 (1945), had been superseded by subsequent federal legislation that contained "an express disclaimer of pre-emption of state laws regulating the responsibilities of union officials ...." 104 S.Ct. at 3188 (quoting from *DeVeau* v. *Braisted*, 363 U.S. 144, 157 (1960)).[1]

The argument advanced by the union in *Brown* is parallel in all salient respects, save one, to the appellants' argument in the case at bar. The appellants have argued thus:

> (1) *H.K. Porter & Co.* v. *NLRB*, 397 U.S. 99, 108 (1970), establishes the proposition that the NLRA requires "private bargaining under governmental super-

[1] The federal legislation that superseded *Hill* v. *Florida* was the 1959 enactment of Section 603(a) of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 553(a), which provided in pertinent part that "nothing in this chapter shall reduce or limit the responsibilities of any labor organization or any officer ... under ... the laws of any state...." *See Brown*, 104 S.Ct. at 3188-89.

vision of the procedure alone, without any official compulsion over the actual terms of the contract." *See also, Local 24, International Brotherhood of Teamsters* v. *Oliver*, 358 U.S. 283, 296 (1959).

(2) Section 47B undeniably and concededly exerts "official compulsion" over the actual terms of collective bargaining agreements. *See* Travelers' Jurisdictional Statement at 10-12 and App. D at 20a.

(3) "Where, as here, the issue is one of an asserted substantive conflict with a federal enactment, then '[t]he relative importance to the State of its own law is not material . . . for the Framers of our Constitution provided that the federal law must prevail'." *Brown*, 104 S. Ct. at 3187 (quoting from *Free* v. *Bland*, 369 U.S. 663, 666 (1962)).

(4) Therefore, Section 47B must yield to superior federal authority.

Of course, there is no federal statute, analogous to Section 603(a) of the Labor-Management Reporting and Disclosure Act, that contains "an express disclaimer of pre-emption of state laws regulating" the health benefit terms of collective bargaining agreements. In this crucial respect, the case at bar differs from *Brown*, and that difference mandates, under the principles of *Brown*, a decisively different result.[2]

2. *Belknap* v. *Hale*, 103 S.Ct. 3172 (1983), decided the question

> whether the National Labor Relations Act . . . preempts a misrepresentation and breach-of-contract action against

[2] In this same respect, the present case differs from *New York Telephone Co.* v. *New York Dept. of Labor*, 440 U.S. 519 (1979), and *Malone* v. *White Motor Corp.*, 435 U.S. 497 (1978): In both *New York Telephone* and *Malone*, state statutes that interfered with the collective bargaining freedom conferred by the NLRA were saved from preemption by other federal statutes which manifested a clear congressional intent to permit the very interference effected by the state statutes.

> the employer brought in state court by strike replacements who were displaced by reinstated strikers after having been offered and accepted jobs on a permanent basis and assured that they would not be fired to accommodate returning strikers.

Id. at 3174. The Court upheld the state causes of action, but only after determining that allowing such state actions would *not* interfere in any area that the NLRA leaves "to be controlled by the free play of economic forces." *Id.* at 3177 (quoting from *Machinists* v. *Wisconsin Employment Relations Commission*, 427 U.S. 132, 140 (1976)). Plainly, on that basis alone, the *result* in *Belknap* cannot credibly be said to "implicitly" require upholding Section 47B; for it is undeniable, and indeed uncontested (*See* Travelers' Jurisdictional Statement at 10-12 and App. D at 20a), that Section 47B *does* interfere with the collective bargaining of health benefits, an area that Congress most assuredly committed "to be controlled by the free play of economic forces." *See* Travelers' Jurisdictional Statement at 9-10.

Further, the reasoning of *Belknap*, when applied to state legislation that interferes with the free negotiation of a mandatory subject of collective bargaining—*i.e.*, when applied to a state statute such as Section 47B—requires that the state law be preempted. In *Belknap*, just as in *Brown*, *Oliver*, and *Machinists*, this Court stated in unequivocal terms that the NLRA "proscribes state regulation and state-law causes of action concerning conduct that Congress intended to be unregulated. . . ." *Belknap*, 103 S. Ct. at 3177. Thus the reasoning of *Belknap* reaffirms the holding in *Oliver* (358 U.S. at 296; emphasis added):

> Since the federal law operates here, in an area where its authority is paramount, *to leave the parties free*, the inconsistent application of state law is necessarily outside the power of the State.

Conclusion

For the foregoing reasons, and the reasons set forth in Travelers' Jurisdictional Statement, probable jurisdiction should be noted.

Respectfully submitted,

LANE MCGOVERN
Counsel of Record
STEVEN A. KAUFMAN
ROPES & GRAY
225 Franklin Street
Boston, Massachusetts 02110
(617) 423-6100
Attorneys for Appellant,
The Travelers Insurance Company

October 17, 1984